Briant. Their Lordships will accordingly report to the Head of Malaysia their opinion that this appeal should be dismissed.

Appeal dismissed.

Solicitors: *Stephenson Harward & Tatham.*

VEERIAH v. MAL SINGH

[F.C. (Ong Hock Thye C.J. (Malaya), Gill F.J. and Pawan Ahmad J.) March 29, 1969]

[Ipoh — Federal Court Civil Appeal No. X.51 of 1968]

Landlord and Tenant — Controlled premises — — One year's notice to terminate monthly contractual tenancy — Whether proper notice — Whether further notice necessary to determine statutory tenancy — Landlord requiring premises for occupation by himself and his family — Greater hardship to tenant — Control of Rent Ordinance, 1956, s. 12(1)(f) & (4) — Civil Law Ordinance, 1956, s. 13(1).

This was an appeal from the decision of the High Court ([1968] 2 M.L.J. 117) dismissing an appeal from the judgment of the Sessions Court requiring the defendant to give up vacant possession of rent-controlled premises of which the appellant was the landlord. Having given a year's notice to determine a monthly contractual tenancy the landlord brought proceedings to recover possession under section 12(1)(f) of the Control of Rent Ordinance. The main ground of appeal by the tenant was that a further notice to determine the statutory tenancy was required.

Held, dismissing the appeal: (1) while a notice for a shorter period than the contractual period of tenancy is not effective to determine the tenancy there is nothing to prevent the landlord from giving a longer notice than contractually required;

(2) as the notice to quit given by the landlord under section 12(1)(f) of the Control of Rent Ordinance, put an end to the contractual tenancy, the tenant therefore was only entitled merely to a personal right of occupation and he was not a tenant in the sense that he had an estate. His statutory tenancy would not be ended by any further notice from the landlord since the statutory tenant could not be thrown out by the landlord except by an order or judgment of court. There was, therefore, no need to determine the statutory tenancy by a further notice to quit under section 12(4) of the Control of Rent Ordinance;

(3) having regard to all the circumstances of the case as were brought out by the evidence, including the question whether other accomodation was available for the landlord or the tenant the learned president rightly found on balance that greater hardship would not be caused by granting an order than by refusing it.

Cases referred to:—

(1) *Meenachi Sundaram & Anor.* v. *Kunjan Pillai* [1955] M.L.J. 128, 129.

(2) *The Queen* v. *County Council of Norfolk* (1891), 60 L.J.Q.B. 379, 380.

(3) *Green* v. *Marsh* [1892] 2 Q.B. 330.

(4) *Lawrence & Sons* v. *Willcocks* [1892] 1 Q.B. 696.

(5) *The King* v. *Commanding Officer, 30th Battalion Middlesex Regiment, Ex Parte Freyberger* [1917] 2 Q.B. 129.

(6) *The King* v. *The Westminster Unions Assessment Committee* [1917] 1 K.B. 832.

(7) *John Waterer, Sons & Crisp, Ltd.* v. *Huggins* (1931), 47 T.L.R. 305, 306.

(8) *Keeves* v. *Dean* [1924] 1 K.B. 685, 697.

(9) *Cartar* v. *S.U. Carburetter Company* [1942] 2 K.B. 288, 291.

(10) *Marcroft Wagons, Ltd.* v. *Smith* [1951] 2 K.B. 496, 501.

(11) *Aitken* v. *Shaw* [1933] S.L.T. (Sh.Ct.) 21.

(12) *The Perak Hauliers Ltd.* v. *The Cycle & Carriage Co. Ltd.* [1962] M.L.J. 7.

(13) *Ponnudurai* v. *Jayatileka* [1965] 1 M.L.J. 131, on appeal [1965] 2 M.L.J. 185.

(14) *Sims* v. *Wilson* [1946] 2 All E.R. 261, 265.

(15) *Harte* v. *Frampton* [1948] 1 K.B. 73, 79.

FEDERAL COURT.

P.P. Dharmananda for the appellant.

F.C. Arulanandom for the respondent.

Cur. Adv. Vult.

Gill F.J.: This is an appeal from a decision of Chang Min Tat J. dismissing an appeal from a judgment and order of the Sessions Court, Ipoh, requiring the defendant-appellant as tenant to give up vacant possession of premises No. 46, Connolly Road, Ipoh, of which the plaintiff-respondent is the landlord. The plaintiff purchased the premises on 21st September, 1963. For some time prior to and since the date of such purchase, the defendant was a tenant of the said premises from month to month on a rental of $70 per month.

It is common ground that the plaintiff's action in the Sessions Court was based on section 12(1)(f) of the Control of Rent Ordinance, 1956 (hereinafter referred to as 'the Ordinance'), and that in compliance with the requirements of that sub-section he had given the defendant not less than one year's notice to quit and deliver vacant possession on 31st March, 1966.

As was stated by Thomson J. (as he then was) in *Meenachi Sundram & Anor.* v. *Kunjan Pillai,*[1] it is well settled law that a letting of a house at a monthly rent raises the presumption of a monthly tenancy. The nature of such a tenancy is described in the following passage in *Hill & Redman's* Law of Landlord and Tenant (14th Edition) at page 40:—

> "A weekly or other periodic tenancy is a continuing tenancy by the week or other period, and does not expire without notice at the end of the first week or period or at the end of each succeeding week or period, there being not a reletting at the beginning of every week or period but a springing interest which arises and which is only determined by a proper notice to quit."

As regards determination of a tenancy generally, the same edition of *Hill & Redman's* Law of Landlord and Tenant at page 41 says:—

"Except where otherwise provided by statute a weekly or other periodic tenancy is determinable by notice to quit, which, in the absence of special stipulations should be given so as to expire at the end of any current period of the tenancy, and, unless some specified length of notice is required by statute (as in the case of a notice to quit premises let as a dwelling, where the minimum length is four weeks), should be equal to the length of the period, i.e. in a weekly tenancy a week's notice, in a monthly tenancy a month's notice, and in a quarterly tenancy a quarter's notice. A notice to quit either on the 'anniversary' of the date of commencement of the tenancy or on the previous day is valid as a notice expiring at the end of a current period. A notice to quit 'on or before' that date is likewise valid, and so is a notice to quit 'by' that date which has the same meaning. On the other hand a notice to quit by a specified time on the anniversary is bad. Any question as to the validity of the notice may be avoided by giving it in a general form, i e. to quit at the end of the next complete week of the tenancy after the service of the notice."

It is clear that, unless some specified length of notice is laid down by any Federal law for the determination of a tenancy, the common law principles apply by virtue of section 3(1) of the Civil Law Ordinance, 1956. Chang Min Tat J. in the course of his judgment said that "while a notice for a shorter period than the contractual period of tenancy is not effective to determine the tenancy, there is nothing to prevent the landlord from giving a longer notice than contractually required." With respect, I entirely agree with that statement of the law by his Lordship.

In the present case, the contractual tenancy between the plaintiff as landlord and the defendant as tenant was a monthly tenancy. It was therefore possible for the landlord to put an end to the contractual tenancy by giving the tenant a month's notice to quit. The effect of such a notice would be to create a statutory tenancy in favour of the tenant by virtue of the provisions of the Control of Rent Ordinance, 1956. In other words, the defendant's tenancy would then be protected by the Ordinance and it would not be possible for the landlord to eject him except in accordance with the provisions of the Ordinance.

The restrictions on the owner's right to possession of premises governed by the Ordinance are set out in section 12 of the Ordinance which provides that no order or judgment for recovery of possession of any premises comprised in a tenancy shall be made or given except in the cases specified therein. The plaintiff's case here was that he reasonably required the premises for occupation by himself and the members of his family. He had thus to bring himself within the provisions of section 12(1)(f) of the Ordinance. As I have already stated, he gave the defendant a year's notice to quit on 31st March, 1966. Thus, the contractual tenancy of the defendant came to an end as on that date, so that as from 1st April, 1966 he became a statutory tenant.

It was contended by Mr. Dharmananda as counsel for the tenant, both before us and in the courts below, that apart from giving not less than a year's notice to quit as required by section 12(1)(f) of the Ordinance, a landlord must give a further notice to determine the tenancy according to law before he can come to court and ask for an order for possession, as required by section 12(4) of the Ordinance which reads as follows:—

"(4) Except in the case of paragraph (e) of sub-section (1) of this section, nothing in this section shall be deemed to relieve a landlord from the necessity of determining the tenancy according to law."

In the Sessions Court the learned president held in effect that, as the tenancy in this case had been determined according to law by the notice of termination to quit dated 4th March, 1965 given under section 12(1)(f) of the Ordinance, no further notice to determine the tenancy was required under section 12(4). His reasons for that conclusion, so far as I am able to gather, are as follows:—

(i) Section 12(4) of the Ordinance merely declares that whatever the grounds on which a landlord seeks to recover possession of premises under section 12(1) of the Ordinance he must, except in a case under section 12(1)(e), determine the tenancy according to law.

(ii) The term "law" in section 12(4) of the Ordinance must be construed in the light of the Interpretation Act, 1967 and article 160(2) of the Federal Constitution to include written law, the common law in so far as it is in operation in the Federation or any part thereof or any custom or usage having the force of law in the Federation or any part thereof.

(iii) The common law rules with regard to the determination of tenancy can only apply in the absence of any written law in that regard.

(iv) Where there is a provision in a written law with regard to the determination of a tenancy, as in section 12(1)(f) of the Ordinance, the common law rule is ousted.

In my judgment both the conclusion at which the learned president arrived and his reasons for such conclusion are correct.

In the High Court a good deal of case law (*The Queen* v. *County Council of Norfolk*,[2] *Green* v. *Marsh*,[3] *Lawrence & Sons* v. *Willcocks*,[4] *The King* v. *Commanding Officer, 30th Battlion Middlesex Regiment, Ex parte Freyberger*[5] and *The King* v. *The Westminster Unions Assessment Committee*[6]) was cited

to the appellate judge on the meaning and application of the word "deem" occurring in various legislation. Having considered those authorities in support of what he thought was an ingenious proposition made by counsel for the appellant, his Lordship stated his conclusions in the following passage in his judgment:—

"In all these authorities cited, the one thread that runs through them is the statutory provision that a thing is deemed to be something when in fact it is not. But not one of them, as far as I can see, can be said to found any proposition that a thing is deemed to impose or comply with a duty or an obligation or a necessary course of action when and if in fact that thing has by its nature and effect discharged that duty or obligation or effected that course of action. In other words, the argument of counsel for the tenant would be correct if and only if the statutory provision was something to the effect that 'Nothing in this section shall be deemed to be a notice determining the tenancy'. If there had been such words or words to that effect, then I would have no hesitation in agreeing with him that the notice of 4th March, 1965 though a notice determining the tenancy with a year's notice was not a notice determining the tenancy for the purposes of the Ordinance. But that was not what section 12(4) says. What it says and, in my view, says plainly is that nothing shall relieve the landlord from the necessity of determining the tenancy according to the law, and it seems to me that so long as the landlord has determined the tenancy and could bring his action within one of the grounds allowed him in section 12(1), he could go before the court and ask for possession. And if his application falls within section 12(1)(f), he need not give a further notice additional to the one year's notice required. He has discharged his obligation to determine the tenancy."

With respect, I agree.

In my judgment, the answer to the argument put forward by counsel for the appellant is very simple. As I have stated above, the notice to quit given by the landlord put an end to the contractual tenancy of the tenant on 31st March, 1966. Thereafter, the only right by which the tenant could remain in possession of the premises was by virtue of the permanency of tenure, known as the statutory tenancy, which was conferred on him by the Ordinance and which arose in his favour as from 1st April, 1966 (*per* Romer L.J. in *John Waterer, Sons & Crisp, Ltd.* v. *Huggins* [7]). As from that date he had no estate in the premises, the estate by virtue of his contractual tenancy having come to an end, and all that the statute gave him was a purely personal right to be free from disturbance by his landlord (*per* Lush J. in *Keeves* v. *Dean* [8]). As was stated by Lord Greene M.R. in *Carter* v. *S.U. Carburetter Company,* [9] the effect of a statutory provision prohibiting a landlord from exercising the right to recover possession against a tenant is to give the tenant what has been conveniently called a statutory tenancy which continues so long as he continues to pay the rent. In truth and in fact, a tenant who takes the benefit of the statute after his tenancy has come to an end is not a tenant at all in the sense that he has an estate; he has a merely personal right of occupation. Evershed M.R. in *Marcroft Wagons, Ltd.* v. *Smith* [10] called it "a statutory right of irremovability". In the present case, it is clear that once the defendant become a statutory tenant he could not be thrown out by the landlord except by an order or judgment of a court. It is equally clear his statutory tenancy could not be ended by any further notice from the landlord. It would therefore be absurd to suggest that the tenancy should have been further terminated under section 12(4) of the Ordinance, when in fact there was not in existence any tenancy which required to be determined.

It was argued before us by counsel for the appellant that the effect of section 12(4) of the Ordinance is that the notice envisaged by section 12(1)(f) of the Ordinance is not, in law, such as to destroy the nature of a weekly or other periodic tenancy, and that therefore there must be a determination of the springing interest by a proper and further notice to quit. The fallacy of that argument lies in the assumption that a springing interest can arise when the tenancy has been determined by a proper notice to quit. The springing interest in a monthly tenancy arises from month to month only so long as the tenancy is not determined by a proper notice. This is clear from the passage from *Hill & Redman's* Law of Landlord and Tenant which I have quoted above.

The second question which the learned president had to consider was whether the landlord "reasonably required" the premises for occupation by himself and his family. In dealing with this question he had in mind the principle that the landlord must show a 'genuine present need' for the house and not be moved by considerations of preference and convenience only, as laid down in the Scottish case of *Aitken* v. *Shaw* [11] which was cited with approval by the then Court of Appeal in the case of *The Perak Hauliers Ltd.* v. *The Cycle & Carriage Co., Ltd.* [12]. Bearing that principle in mind and applying an objective test, as approved by their Lordships in the case of *Ponnudurai* v. *Jayatileka,* [13] to the evidence led on the question of reasonableness, he found that the landlord's claim was *bona fide* and that he was in need of and reasonably required the said premises for his own occupation and purposes. That finding of the learned president was not challenged either in the High Court or in this court.

The next question which the learned president had to consider, and which was the subject matter of the second ground of appeal both in this court and in the High Court, was

the question of greater hardship, which included the question whether other accommodation was available for the owner or the tenant. On the evidence before him, he found that as far back as 1963 the landlord had told the tenant that he could arrange for him to be a tenant of No. 9, Jelf Road, Ipoh which is now occupied by the landlord, but that because his offer was turned down he did not approach the Chinese owner of that house. The landlord had also offered one of his houses at Silibin Lane, Ipoh. The learned president went to the area and found that two of the houses were in fact vacant and ready for occupation if the tenant would accept them. He also found that the tenant had rejected the landlord's offer of $1,500 in return for possession of the premises and that the tenant wanted $7,000 in order to find other premises.

The learned president also considered the point raised by counsel for the appellant on the authority of *Sims* v. *Wilson* [14] that the other accommodation offered was not rent-controlled, which was true of the houses in Silibin Lane. He ruled, however, that on the authority of *Sims* v. *Wilson* itself it would be a misdirection to hold that no order for possession could be made unless the other accommodation offered to the tenant was rent-controlled.

It was said in *Sims* v. *Wilson* that "a judge was entitled to take into consideration future, as well as present hardship". On this point it was submitted to the learned president by counsel for the landlord that *Ponnudurai* v. *Jayatileka* was more relevant and that the possibility of the tenant being ejected from non-controlled premises was only speculative. The learned president has stated in his judgment that it was clear to him that the court should consider the question of future hardship, and that he was unable to find, nor was it pointed out to him, what evidence there was of the possibility of future hardship to the tenant in this case if an order for possession was made. Having considered the various relevant factors on these points, he was satisfied that the landlord had discharged the onus which lay upon him of proving that other accommodation, as distinguished from 'suitable alternative accommodation', was available for the tenant.

On the main question of greater hardship, the learned president had in mind what was said by Asquith L.J. in the English case of *Harte* v. *Frampton*, [15] and he considered hardship to all who might be affected by the grant or refusal of an order for possession — relatives, dependants, lodgers, guests, and the stranger within the gates. He formed the opinion that the tenant, who had rented out the whole of the ground floor of the premises to a Chinese sub-tenant for more than three years, and now allowed his eldest son to display Singer Sewing Machines there, would suffer very little hardship if an order was made. He has said in his judgment that it was more difficult to assess the hardship of the tenant's other relatives who were not his dependants but, nevertheless, he considered them in balancing the relative hardship of the two parties.

Having regard to all the circumstances of the case, as were brought out in the evidence before him, including the question whether other accommodation was available for the owner or the tenant, the learned president found on balance that greater hardship would not be caused by granting an order than by refusing to grant it. It has not been suggested, and I do not think that it can possibly be suggested, that there was no evidence on which the learned president could reach that conclusion.

The learned appellate judge, in the concluding paragraph of his judgment, has stated his views on the findings of the learned president as follows:—

> "Now all this evidence was before the learned president. He had the advantage of seeing and hearing the witnesses. He had the further advantage of visiting the premises and the locality. He had come to certain findings of fact and inferences drawn from the facts he had found. On the whole of the evidence he had come to the conclusion that greater hardship would be inflicted by refusing to grant the order than by granting it. I am unable to see nor has it been demonstrated to me that on the evidence before him, and in all the circumstances of the case, he could not come to his findings of fact or how his inferences were wrongly drawn. Neither has it been shown to me that his very careful reasoning and consideration of the relevant authorities were wrong."

I entirely agree.

I would dismiss the appeal with costs to the respondent both here and in the courts below. The deposits in the Sessions Court and the High Court are to be paid out to respondent towards taxed costs.

Ong Hock Thye C.J. (Malaya): I concur-The appeal is dismissed with costs.

Pawan Ahmad J.: I have had the advantage of reading the judgment of my brother Gill and I am in entire agreement with it. I have nothing more to add.

Appeal dismissed.

Solicitors: *Dharmananda & Co.; Arulanandom & Co.*